

Stainless Steel Flanges from China and India: Legal Issues

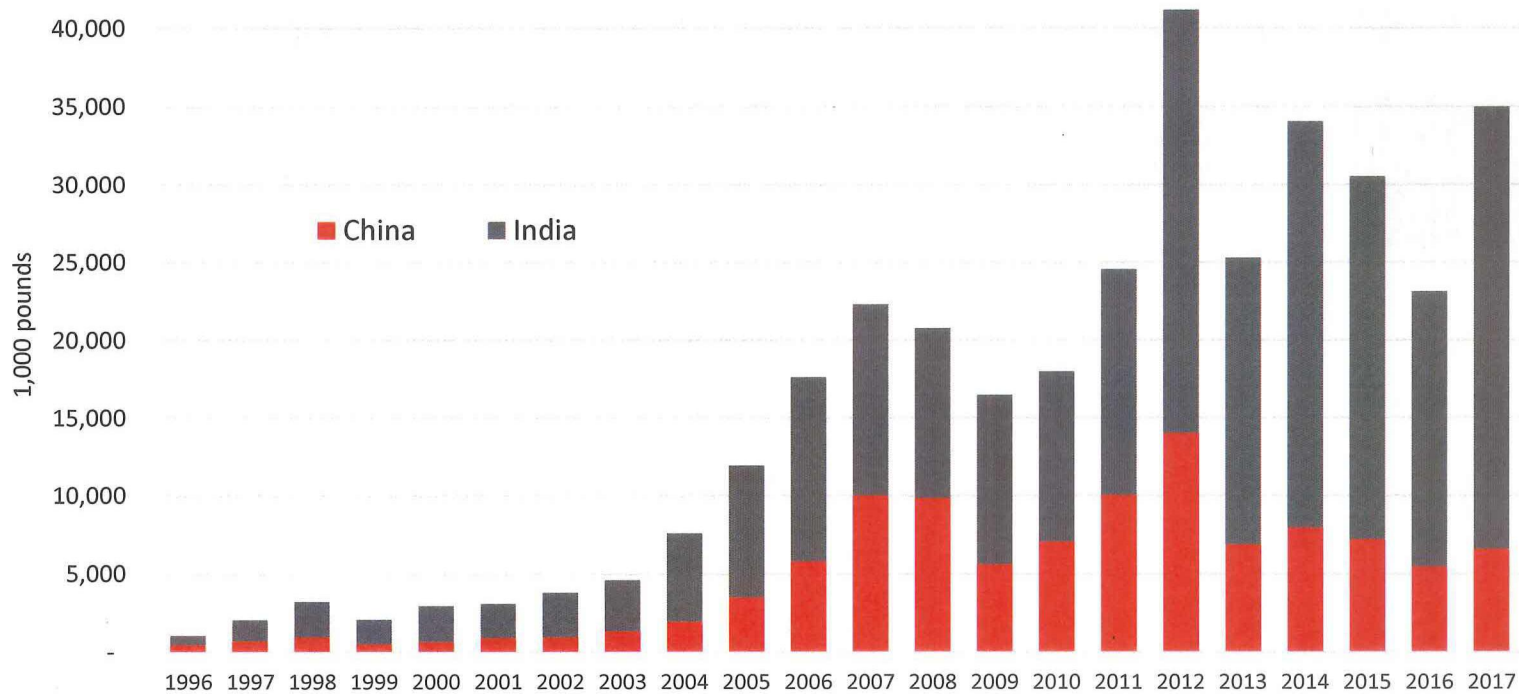
USITC Hearing

April 10, 2018

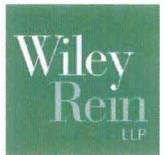
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Subject Imports Have A Long History of Aggressively Targeting the United States



Source: Prehearing Staff Report at IV-8 - IV-9 (Table IV-4).





Domestic Like Product

- Should be defined as coextensive with the scope
- No party has argued for an alternative definition

Domestic Industry

- Finishers should not be included in the domestic industry
 - Minimal capital investment needed
 - Little technical expertise to run automated CNC and marking machines
 - Minority of value added
 - Very low employment numbers required
 - Few flanges sourced in the U.S.
- Even if it disagrees, the Commission should focus on integrated producers

Finishers Do Not Have Sufficient Production-Related Activities

Factor	Integrated Producer	Finishing Only
Capital Investment	<p>“capital intensive”</p> <p>Tens of millions of dollars</p>	<p>“relatively cheap”</p> <p>A few hundred thousand dollars</p>
Technical Expertise	<p>Operation of equipment for forging, heat treatment, saw shop, with expertise in metallurgy and engineering necessary to meet “precise chemical, mechanical and other specifications”</p>	<p>Operation of “largely pre-programmed and automated” CNC machine, and marking machine</p>
Value Added	<p>Majority of value added</p>	<p>Minority of value added</p>
Employment Levels	<p>High employment needed to operate number of complex equipment</p>	<p>Low employment needed to operate automated machines</p>
Quantity of Parts Sourced in the United States	<p>Significant quantities sourced domestically</p>	<p>Low quantities sourced from U.S.; significant from subject countries</p>

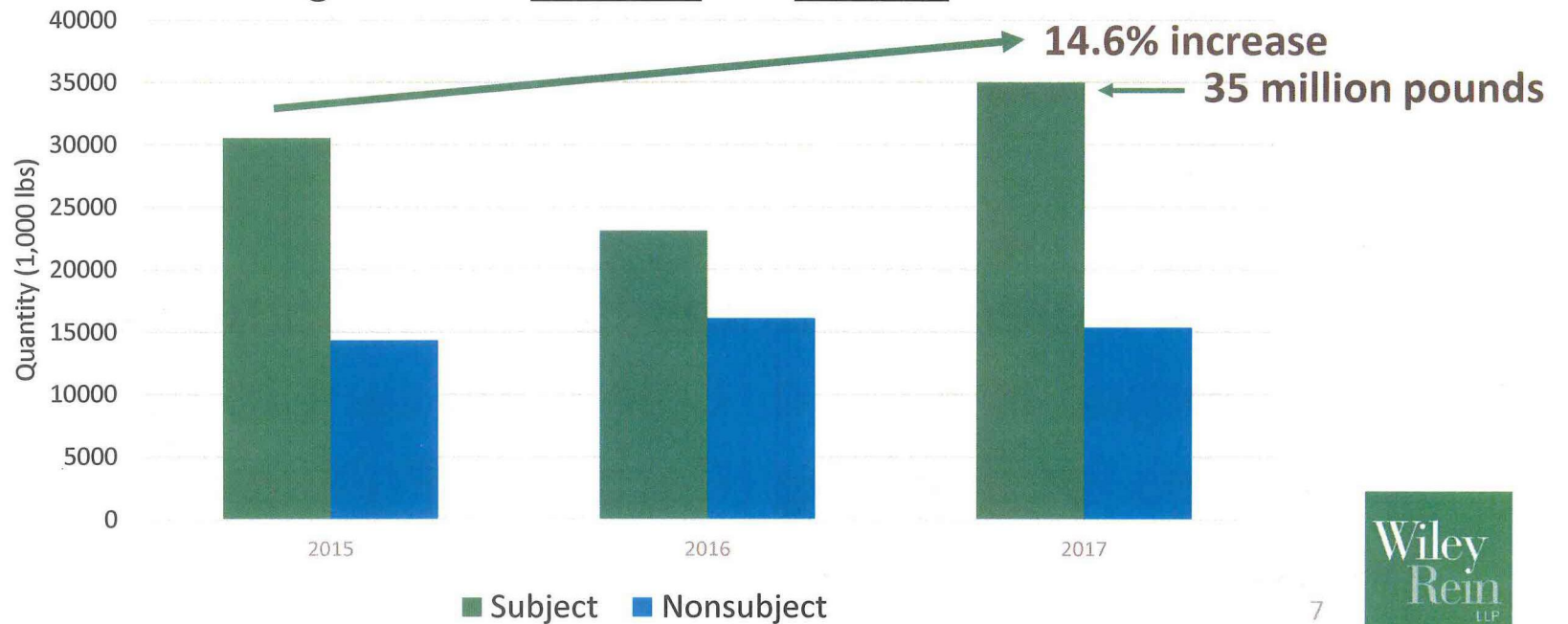
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Kerkau should be excluded as a Related Party

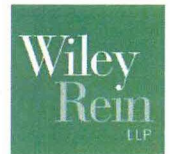
- Even if finishers are included, Kerkau should be excluded as a related party
- Producers who are related to exporters/importers, or who are importers, may be excluded under “appropriate circumstances” (Sec. 771(4)(B))
- The Commission has previously found that exclusion of finishers under the related party provision was appropriate. (USITC Pub. 2724 at I-9 – I-11)
- Kerkau’s business model is premised on access to dumped and subsidized imports

Volume

Subject Imports and Increases in Subject Imports Were Significant in Absolute and Relative Terms



Source: Prehearing Staff Report at IV-4 (Table IV-2).



Subject Import Volume Levels Were Significant in Absolute and Relative Terms

- Throughout the POI, subject imports were significant relative to demand and to U.S. production
- Volumes were likely understated, as some flanges were forged in India or China and sent to third countries for finishing (Germany, Philippines, Vietnam) prior to export into the U.S. market



Increases in Subject Imports Were Significant in Absolute and Relative Terms

- Grew by 14.6% over the POI
- Subject imports gained market share at the expense of both the domestic product and nonsubject imports
- But for the filing of the Petitions, the increase would have been greater in 2017

Viraj - 337 Investigation

{T}he Commission finds that Viraj Profiles engaged in a course of conduct in which it lied about its document production, obstructed the judicial proceedings, and intentionally destroyed evidence during the investigation.

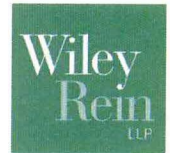
See Commission Opinion (June 9, 2016) at 16

- An exclusion order went into effect at the end of July 2016
- A surge of imports preceded the order
- Indian imports decreased after the order, but they fully recovered by Q4 2017
 - Indian imports were apparently transferred from Viraj to Bebitz
 - A close business relationship exists between Viraj and affiliated company Bebitz
 - Bebitz was not issued an exclusion order

U.S. Imports of Indian Stainless Steel Flanges: 2015 - 2017



Source: Prehearing Staff Report at IV-19 (Table IV-9).



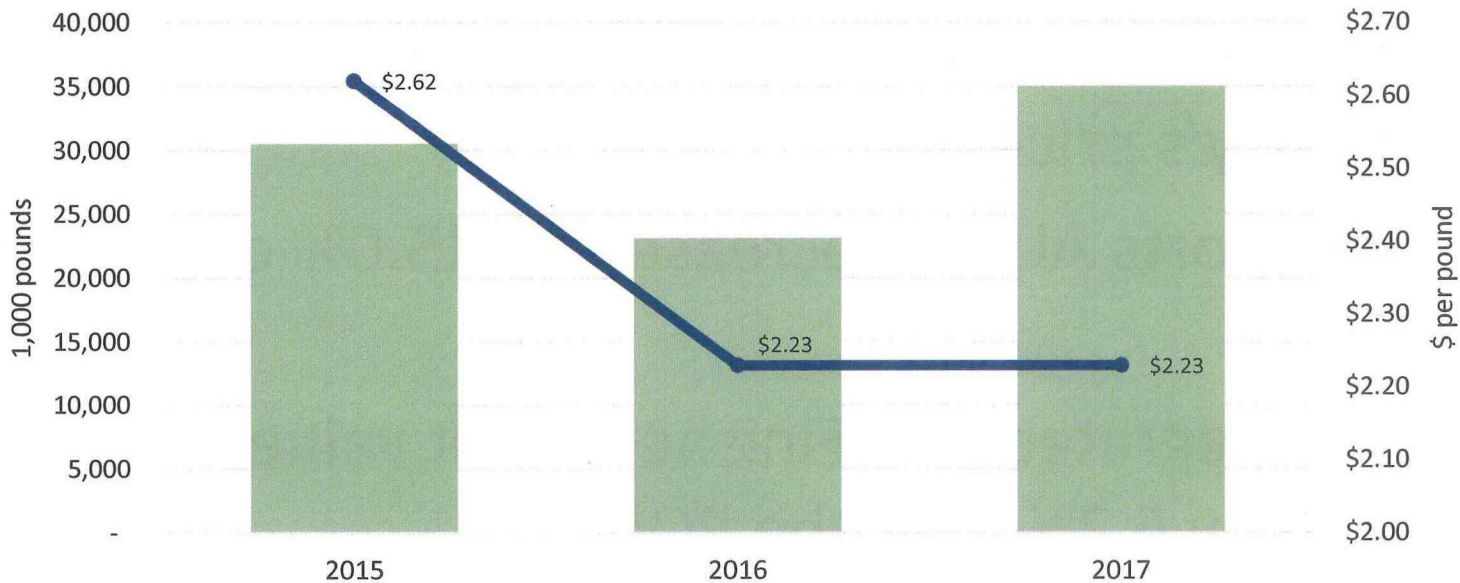
Underselling Data

- In this market, price is a major purchasing factor and demand is inelastic (small changes in volume have significant price effects)
- Subject flanges undersold the domestic like product in all 114 price comparisons, with margins ranging from 7.6% - 74.8%

Price Depression

- Subject import prices declined and pulled down the U.S. industry's prices
- Subject imports AUV's decreased by 15.0% over the POI
- For both Integrated and Finishers, unit values decreased by 6.7% over the POI

Subject AUVs, by quantity, decreased by 15% over the POI, as subject imports increased



- AUV trends do not generally reflect differences and changes in product mix, as units are in pounds (rather than flange size or type)

Source: Prehearing Staff Report at IV-5 (Table IV-2).

Price Depression (cont.)

- The large presence of low-priced subject imports not only forced U.S. prices down, but also prevented the U.S. industry from pricing its products at an appropriate level
- Prices for Petitioner decreased *until the filing of this case*

The Job Shop Effect

- Subject imports have forced U.S. producers to increasingly depend on low-volume, low-demand sales, pushing them out of high-volume sales of high-demand products
- This has significant effects on U.S. producers' cost structures
- Another manifestation of material injury



Lost Sales as Negative Price Effects

- Over the POI, 13.4 million confirmed pounds of subject merchandise was purchased in subject imports rather than the domestic like product
- The U.S. industry lost millions of dollars as a result of subject import underselling

Estimated Lost Sales During the POI Were Significantly Greater Than Petitioner's 2017 U.S. Shipments



Adverse Impact

- Due to large and increasing volumes of subject imports, the U.S. industry's financial performance declined over the POI, despite increasing demand
- Both integrated, and integrated and finishing operations, lost market share
- Even if the Commission looked at integrated and finishers together:
 - Net sales by quantity decrease by 6.6% over the POI
 - Net sales by value decrease by 12.8% over the POI
 - Unit values decrease by 6.7% over the POI

Source: Table C-1 at C-4.

Adverse Impact (cont.)

- Several trade and financial performance indicators for Integrated Produces have declined, including:
 - Commercial shipments
 - Production
 - Capacity Utilization
 - Net sales by quantity and value
 - Capital investments
 - Employment data

Adverse Impact (cont.)

- It bears repeating the purchasers confirmed that they bought subject imports that they would have bought from U.S. producers primarily on the basis of price
- 13.4 million pounds in confirmed lost sales
- Conservative estimate of \$2.62 per lb. (*i.e.*, subject sources' AUV's at the beginning of the POI) would mean there were **\$35.2 million in confirmed lost sales for the domestic industry**

Bankruptcy of Ameriforge

- In evaluating 2017 performance of the domestic industry, the Commission should recognize that the company filed for Chapter 11 bankruptcy in mid-2017
- The company went through massive restructuring in 2017

19 U.S.C. § 1677(7)(J)

“The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is *profitable* or because the performance of that industry has *recently improved*.”

(emphases added)

Post Petition Effects

- As a direct result of filing this case, the domestic industry saw significant price increases in 4th quarter 2017
- These price increases directly affected the profitability of the domestic industry
 - (as did the 337 regarding Viraj, and Ameriforge's bankruptcy)

Threat – Volume and Market Penetration

- Over the POI, subject imports' volume and market penetration have increased, both absolutely and relative to market share
- Arranged imports for 2018 are significant
- India has a history of rapid increases in volume, and market penetration
 - India and its “history of increases in volume and underselling of the domestic like product . . .” was found to likely have a discernible adverse impact (See 2005 Views at 9, 17)

Threat – Excess Capacity

- The record shows subject countries – particularly India – have substantial capacity and excess capacity fueled by significant government subsidies
- Indian and Chinese producers are also export-oriented and will continue to target the United States
 - In 2017, the U.S was the leading export market for India, accounting for almost 35% of India’s stainless steel flange exports
- In the last investigation, the Commission found “evidence of substantial capacity and export orientation,” and recognized foreign producers’ export orientation and their “continued reliance on the U.S. market” (see 2005 Views at 9, 17-18)

Threat – Underselling

- Subject imports have consistently undersold the domestic like product at significant margins throughout the POI
- The Commission has also previously found that “given the fungibility between domestic and subject stainless steel flanges, the producers in India . . . have further incentive to lower their prices to recapture their U.S. market share,” and that “increased sales of subject imports likely would be achieved by means of aggressive pricing” (see 2005 Views at 19)

Threat - Subsidies

- Indian and Chinese producers receive massive government subsidies
- Viraj/Bebitz alone has received more than 300 million Euros of subsidies from the Indian Government
- Commerce initiated on 41 programs that benefit Indian producers, and more than 34 programs that benefit Chinese producers

There is significant dumping and subsidization of subject imports

Commerce applied total or partial AFA to Indian and Chinese producers (Echjay, Bebitz, Viraj, Chandan GJY, China-wide entity) and their governments for failing to cooperate to the best of their abilities.

	AD	CVD
India	Echjay/Bebitz/Viraj: 145.25% Chandan/All-Others: 18.10% (prelim., 3/28/2018)	Bebitz: 239.61% Echjay/All-Others: 5.0% (prelim., 1/23/2018)
China	Shanxi Guanjiaying Flange Forging Group Co. ("GJY")/China-wide: 257.11% (prelim., 3/28/2018)	All Companies: 174.73% (final, 4/6/2018)

Indian Non-Compliance

- No Indian producer has provided a brief in the preliminary or final phase of this investigation
- No Indian producer is appearing in this hearing
- Indian imports alone increased by **21.9%** over the POI
- Indian AUVs decreased by **22.5%** over the POI
- Viraj has before the Commission *“lied about its document production, obstructed the judicial proceedings, and intentionally destroyed evidence during the investigation.”*

Chinese Offers to Circumvent

From: [REDACTED]

Sent: Monday, [REDACTED] 2018 9:40 PM

Subject: Flange Supplier-China

We will by other countries Transit Port on dealing with the increased duties.as Singapore port.

Thanks

[REDACTED]

Chinese Offers to Circumvent (cont.)

On Wed, [REDACTED] 2018 at 2:41 AM, [REDACTED] wrote:

Hi [REDACTED],

Thank you very much for your email message.

Frankly, if the anti-dumping tax rate is high, maybe we have to transfer the material from South-East Asia.

Thanks and best regard,

Chinese Offers to Circumvent (cont.)

From: [REDACTED]
Date: Wed, [REDACTED] 2018 at 3:33 AM
Subject: [REDACTED]
To: [REDACTED]

Dear [REDACTED],

Thank you for your kind email .

About the antidumping and countervailing duty case in the United States on stainless steel flanges from China . They usually let us send the goods to other country first , and than they let it export from other country to the United States. We are the manufactory of carbon steel flanges, If your quantity of the stainless steel flange is less, you can also ship together with the carbon steel flanges .

Any questions, please feel free to connect with me .



CONCLUSION